IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.164 OF 2001

Saraswati Namdeo Morye. ... Appellant.

Versus.

Manoraja Rajaram Bhogate & ors. ... Respondents.

Shri A.S.Khandeparkar for the Appellant.

CORAM : ABHAY S. OKA, J.

DATED : 13th January, 2005.

P.C.:

1. Heard Shri Khandeparkar for the Appellant. The Appellant is the unsuccessful Plaintiff in a suit for partition. The Appellant is the married daughter of Pandurang who admittedly expired before coming into force of the Hindu Succession Act, 1956. The Appellate Court after recording that Pandurang had undivided share held that as Pandurang expired prior to the coming into force of the said Act of 1956, the Appellant/Plaintiff being married daughter cannot claim partition. There is nothing on record to prove the fact that Pandurang expired after coming into force the said Act of 1956. Therefore, no fault can be found with the approach of the Appellate Court.

2. Shri Khandeparkar invited my attention to the deposition of the Respondent No.2 in which he has stated that the cattle shed which is adjacent to the suit house was allotted to the Plaintiff's mother. A perusal of

the deposition of the Respondent No.2 shows that such a categorical statement has been made in the cross-examination. Shri Khandeparkar pointed out that a finding is recorded by the trial Court that the said cattle shed was allotted to the Plaintiff's mother. Shri Khandeparkar submitted that as a result of dismissal of the suit, the Appellant may be deprived of her right in respect of the said cattle shed. I am of the view that the said submission is not correct. The Respondent No.2 has admitted that the cattle shed has been allotted to the Appellant's mother. In the present suit, the Appellant is claiming share in her capacity as legal representative of her father. Therefore, the rights which the mother of the Appellant is having in respect of the cattle shed are obviously not affected by the decree of the Appellate Court.

3. There is no substantial question of law arising in this Second Appeal. Subject to the observation made above, the Second Appeal is dismissed with no order as to costs.

Judge.